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9 San Jose Police Officers' Association

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SANTA CLARA

12
13 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF
17 ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT
18 RETIREMENT PLAN OF CITY OF
SAN JOSE, and DOES 1-10,
19 inclusive,

20 Defendants.

No.

**PLAINTIFF SAN JOSE POLICE OFFICERS'
ASSOCIATIONS' REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING PRELIMINARY
INJUNCTION**

**DECLARATION OF JONATHAN YANK IN
SUPPORT OF *EX PARTE* APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION**

REQUEST FOR JUDICIAL NOTICE

Plaintiff San Jose Police Officers' Association ("SJPOA") respectfully requests that the Court take judicial notice of the below-described documents in support of its *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction, pursuant to Evidence Code sections 451, 452 and 453.

1. Request for Judicial Notice ("RJN") 1:

Petitioner SJPOA requests judicial notice of the "Full Text of Measure B," which was Item No. 3.5(b) on the March 6, 2012 San Jose City Council Agenda, which the City Council voted to place on the June 5, 2012 ballot, and which was passed by the San Jose electorate on June 5, 2012. A true and correct copy of the "Full Text of Measure B" is attached hereto as Exhibit 1, and it is also publicly available at the following URL: <http://www.sanjoseca.gov/clerk/elections/2012Election/fulltextmeasureb.pdf>. It is relevant for the reasons delineated in Petitioner's Memorandum of Points and Authorities in Support of Ex Parte Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction ("Petitioners' MPA") filed herewith, particularly in regard to its amendments to the San Jose City Charter that will reduce and/or eliminate various retirement benefits for the SJPOA's members.

Authority for RJN 1:

Evidence Code section 451 requires a court to take judicial notice of "the provisions of any charter described in Sections 3, 4, or 5 of Article XI of the California Constitution." (Evid.Code § 451(a).) Evidence Code section 452(c) authorizes judicial notice of "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Thus, where relevant, courts will "grant[] request[s] to take judicial notice of ... local ballot measures that purport[] to amend [a city] Charter." (*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637, 649; see also *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 22 fn.10 ["ballot pamphlet ..., as an official government document, is a proper subject of judicial notice ".])

1 **2. RJN 2:**

2 Petitioner SJPOA requests judicial notice of provisions of the San Jose
3 Municipal Code, which is publically available on the internet at the following URL:
4 <[http://sanjose.amlegal.com/nxt/gateway.dll/California/sanjose_ca/sanjosemunicipalcode?](http://sanjose.amlegal.com/nxt/gateway.dll/California/sanjose_ca/sanjosemunicipalcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanjose_ca)
5 [f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanjose_ca](http://sanjose.amlegal.com/nxt/gateway.dll/California/sanjose_ca/sanjosemunicipalcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanjose_ca)>. True and correct copies of
6 relevant portions of the San Jose Municipal Code are attached hereto as Exhibit 2. These
7 sections are relevant for the reasons delineated in Petitioners' MPA, particularly in regard
8 to the establishment of various retirement benefits for the SJPOA's members.

9 **Authority for RJN 2:**

10 Evidence Code section 452(b) authorizes judicial notice of "Regulations and
11 legislative enactments issued by or under the authority of the United States or any public
12 entity in the United States." Because city municipal codes are legislative enactments of
13 public entities, they are properly subject to judicial notice. (See *Madain v. City of Stanton*
14 (2010) 185 Cal.App.4th 1277, 1280 fn. 1; see also *Hoffman Street, LLC v. City of West*
15 *Hollywood* (2009) 179 Cal.App.4th 754, 770 fn. 9.)

16 **3. RJN 3:**

17 Petitioner SJPOA requests judicial notice of excerpts of the July 1, 2011 – June
18 30, 2013 Memorandum of Agreement ("MOA") between the City of San Jose and the
19 SJPOA, true and correct copies of which are attached hereto as Exhibit 3. These
20 provisions of the MOA are relevant for the reasons delineated in Petitioners' MPA,
21 particularly in regard to the establishment of various pay and retirement benefits for the
22 SJPOA's members.

23 **Authority for RJN 3:**

24 Evidence Code section 452(b) authorizes judicial notice of "Regulations and
25 legislative enactments issued by or under the authority of the United States or any public
26 entity in the United States." An MOA ratified by a local government entity is a legislative
27 enactment subject to judicial notice. (*Curcini v. County of Alameda* (2008) 164
28 Cal.App.4th 629, 647 [judicial notice taken of "the MOU between the Deputy Sheriffs'

1 Association of Alameda County and the County”]; see also *Rialto Police Benefit Ass'n v.*
2 *City of Rialto* (2007) 155 Cal.App.4th 1295, 1299 fn. 1.)

3 **4. RJN 4:**

4 Petitioner SJPOA requests judicial notice of provisions of the San Jose City
5 Charter, which is publically available on the internet at the following URL:
6 <<http://www.sanjoseca.gov/clerk/charter.asp>>. True and correct copies of relevant
7 portions of the San Jose City Charter are attached hereto as Exhibit 4. These sections are
8 relevant for the reasons delineated in Petitioners’ MPA, particularly in regard to the
9 establishment of various retirement benefits for the SJPOA’s members.

10 **Authority for RJN 4:**

11 Evidence Code section 451 requires a court to take judicial notice of “the
12 provisions of any charter described in Sections 3, 4, or 5 of Article XI of the California
13 Constitution.” (Evid.Code § 451(a).)

14
15 Dated: June 5, 2012

16 CARROLL, BURDICK & McDONOUGH LLP

17
18 By _____

19 Gregg McLean Adam
20 Jonathan Yank
21 Gonzalo C. Martinez
22 Jennifer S. Stoughton

23 Attorneys for Plaintiff San Jose Police
24 Officers’ Association
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1. I am an attorney licensed to practice before all the courts of the State of California. I am a partner with the firm of Carroll, Burdick & McDonough LLP, attorneys of record for Plaintiff SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA") in this matter.

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1 6. The City declined the offer, instead publishing and republishing the \$650
2 million estimate as justification for a declaration of fiscal emergency and a ballot measure
3 to slash Police Officers' and other City employees' pensions.

4 7. However, on December 6, 2011, in light of an improving economic
5 outlook and an apparent inability to support his repeated bald assertions that retirement
6 costs would reach \$650 million by fiscal year 2015-2016, Mayor Reed withdrew his
7 proposal for a declaration of fiscal emergency.

8 8. On February 21, 2012, the City's own retirement system's actuaries
9 completed a report on the Police and Fire Retirement Plan, which, along with a February
10 8, 2012 report on the Federated Plan (for non-safety employees), estimated that the actual
11 future projection figure for Fiscal Year 2015-16 is approximately \$310 million, less than
12 half the level that the City has consistently represented.

13 9. On March 9, 2012, San Jose Mayor Chuck Reed issued a "March Budget
14 Message for Fiscal Year 2012-2013, in which he admitted that "the City Manager is now
15 projecting a \$10 million surplus for the 2012-2013 Fiscal Year."

16 10. Nonetheless, on March 6, 2012, the San Jose City Council passed a
17 resolution ordering that a "Pension Plan Amendments" ballot measure be placed on the
18 June 5, 2012 ballot.

19 11. The "Pension Plan Amendments" measure, which was entitled
20 "Measure B" on the June 5, 2012 ballot, is expected to pass by a wide margin.

21 12. Attached hereto as Exhibit 1 is a true and correct copy of the "Full text of
22 Measure B." This document was obtained on the internet from the following URL:
23 <<http://www.sanjoseca.gov/clerk/elections/2012Election/fulltextmeasureb.pdf>>.

24 13. Attached hereto as Exhibit 2 are true and correct copies of excerpts of the
25 San Jose Municipal Code. This document was obtained from the following internet URL:
26 <[http://sanjose.amlegal.com/nxt/gateway.dll/California/sanjose_ca/sanjosemunicipalcode?](http://sanjose.amlegal.com/nxt/gateway.dll/California/sanjose_ca/sanjosemunicipalcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanjose_ca)
27 [f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanjose_ca](http://sanjose.amlegal.com/nxt/gateway.dll/California/sanjose_ca/sanjosemunicipalcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanjose_ca)>.

1 14. Attached hereto as Exhibit 3 are true and correct copies of excerpts of the
2 July 1, 2011 – June 30, 2013 Memorandum of Agreement between the City of San Jose
3 and the SJPOA. This document was obtained from the following internet URL:

4 <http://www.sanjoseca.gov/employeerelations/moas/moa_poa.pdf>.

5 15. Attached hereto as Exhibit 4 are true and correct copies of excerpts of
6 the San Jose City Charter. This document was obtained from the following internet URL:

7 <<http://www.sanjoseca.gov/clerk/charter.asp>>.

8 16. On Tuesday June 5, 2012, at approximately 8:28 a.m., my office sent a
9 letter by email and facsimile to Jonathan Holtzman and Nora Frimann, counsel for
10 Defendant City of San Jose, and to Harvey Leiderman, counsel for Defendant Board of
11 Administration for Police and Fire Department Retirement Plan, advising that we would
12 appear on behalf of the SJPOA on Wednesday, June 6, 2012, at 8:15 a.m. in a then-
13 unassigned department of the Santa Clara County Superior Court and move *ex parte* for a
14 Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction
15 Should Not Issue restraining Defendants from implementing particular provisions of
16 Measure B, which by then will have been passed by the San Jose electorate on June 5,
17 2012. My June 5 correspondence also requested that Defendants' counsel advise whether
18 they intend to contest the *Ex Parte* Application. Attached to this Declaration as Exhibit 5
19 is a true and correct copy of my June 5 correspondence.

20 17. As of the time of signing this Declaration, I have not heard back from
21 counsel for Defendants as to whether they will appear to oppose this *ex parte* application.

22 18. This is the first *ex parte* Application SJPOA has made in this matter.

23 I declare under penalty of perjury under the laws of the State of California that
24 the foregoing is true and correct and that this declaration is executed this 5 day of June,
25 2012, at San Francisco, California.

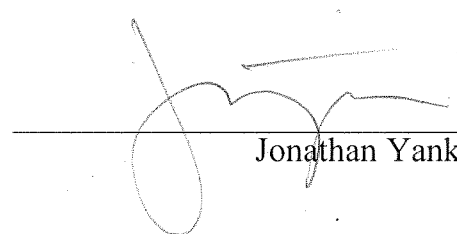
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Jonathan Yank

Exhibit 1

**ARTICLE XV-A
RETIREMENT**

**PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO
ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS
WHILE PRESERVING ESSENTIAL CITY SERVICES**

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as:
"The Sustainable Retirement Benefits and Compensation Act."

Section 1501-A: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

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Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 1502-A: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

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The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

Section 1503-A. Act Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

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Section 1504-A. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 1505-A. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

Section 1506-A. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to

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amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Section 1507-A: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of

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IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

- (i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.
- (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
- (iii) The current age of eligibility for service retirement under the existing plan as approved by the City

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Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

- (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
- (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
- (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
- (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time

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worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

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- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 1508-A: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent

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the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose - San Francisco - Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

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(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

Section 1509-A: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

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(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

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**Section 1510-A: Emergency Measures to Contain Retiree
Cost of Living Adjustments**

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

Section 1511-A: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

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Section 1512-A: Retiree Healthcare

- (a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.
- (b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.
- (c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 1513-A: Actuarial Soundness (for both pension and retiree healthcare plans)

- (a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.
- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually

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through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
- (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

- (i) the funding objectives and actuarial assumptions of the plans; and
- (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

February 8, 2012

Section 1514-A: Savings

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

Section 1515-A: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

February 8, 2012

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

ADOPTED this 6th day of March, 2012, by the following vote:

AYES: CONSTANT, HERRERA, LICCARDO, NGUYEN,
 OLIVERIO, PYLE, ROCHA; REED.

NOES: CAMPOS, CHU, KALRA.

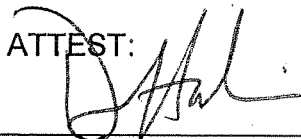
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC
City Clerk

Exhibit 2

San Jose, CA Code of Ordinances

Chapter 3.36
1961 POLICE AND FIRE DEPARTMENT RETIREMENT PLAN

Parts:

- 1 General Provisions and Definitions
- 2 Membership
- 3 Retirement Board and Other Officers
- 4 Retirement Fund
- 5 Service
- 5.5 Benefits Generally
- 6 Retirement for Service
- 7 Retirement for Disability
- 8 Survivorship and Death Benefits
- 9 Surviving Child's School Allowance
- 9.5 Optional Settlements
- 10 Contributions
- 11 Suspension or Termination
- 12 Increased Benefits for Certain Persons
- 13 Death While on Military Leave of Absence
- 14 Medical Benefits for Certain Persons
- 15 Dental Benefits for Retired Members and Survivors
- 16 Reciprocity
- 17 Plan-Approved Domestic Relations Orders
- 18 Purchase of Eligible Prior Military Service

Part 1
GENERAL PROVISIONS AND DEFINITIONS

San Jose, CA Code of Ordinances

3.36.580 Supplemental retiree benefit reserve.**A. Establishment and Purpose.**

1. The board shall establish a reserve in the retirement fund to be known as the supplemental retiree benefit reserve or SRBR.
2. The purpose of the SRBR shall be to provide a source of funding for benefits to supplement those benefits otherwise provided by this plan or the Chapter 3.32 plan to former members of such plans who are receiving benefits, survivors of such former members, and survivors of members who die prior to receiving benefits from this plan.

B. Funding.

1. The initial amount allocated to the SRBR shall be ten percent of the plan's prefunded actuarial accrued liability as of June 30, 1999, as determined by the board's actuary. The board's actuary shall calculate the initial funding amount without regard to any plan amendments that became effective after June 30, 1999.
2. Each June 30, beginning June 30, 2000, there shall be allocated to the SRBR the investment earnings attributable to the balance in the SRBR as of June 30 of the calendar year in which the allocation is made. Investment earnings credited to the SRBR shall be calculated as though the transfer required by paragraphs 3. and 4. of this Subsection B. had been made on the immediately following July 1 (first allocation on July 1, 2000) regardless of the actual date such transfer is made. In the event the investment earnings for the retirement fund are less than zero, no investment earnings shall be allocated to the SRBR and no reduction shall be made to the SRBR balance except as provided in Subsection C. below.
3. The board shall determine the excess earnings for the twelve months ending June 30, 2000, and for the twelve months ending June 30, 2001, and shall transfer to the SRBR ten percent of the excess earnings for each such twelve-month period.
4. Within ninety days from and after receipt of audited financial statements for each fiscal year, commencing with the year 2002, the board shall determine, and by written resolution declare, the excess earnings as of June 30 in each such year, and shall transfer ten percent of such excess earnings to the SRBR. The excess earnings shall be added to the SRBR principal and shall not be available for distribution under Subsection D.

C. Reduction of SRBR Balance.

1. If the city's contribution rate, as determined by the board's actuary during any actuarial valuation performed after June 30, 1999, will increase as a result of poor investment earnings in the retirement fund, there shall be transferred from the SRBR to the regular retirement fund and the cost-of-living fund an amount equal to ten percent of the city's increased contributions for the first twelve months following the increase in the contribution rates. Such transfers shall be limited to those situations where the increase in the city's contribution rate is attributable to poor investment earnings; no such transfer shall be made for any increase in the city's contribution rate that is due to any factor other than poor investment earnings including, but not limited to, increases in medical or dental premium costs, enhancements to benefits provided under the plan, or changes in the actuarial assumptions.

2. Notwithstanding Paragraph 1. of this Subsection C., the amount transferred from the SRBR because of the increase in the city's contributions shall not exceed five percent of the accrued balance in the SRBR as of the date of the actuarial valuation.

D. Distributions.

1. The Board shall make an initial distribution from the SRBR during calendar year 2002.

2. Beginning in calendar year 2003, the board shall make an annual distribution from the SRBR; except there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013, prior to June 30, 2013.

3. The initial distribution from the SRBR shall be made solely to former members of this plan or the Chapter 3.32 plan who are receiving benefits as of June 30, 2001, and survivors (of such former members or of members who died prior to receiving benefits from this plan) who are receiving benefits as of June 30, 2001; provided, however, that if a member or former member died after June 30, 2001, but before the initial distribution, the survivor shall be deemed to have been receiving benefits as of June 30, 2001.

4. All subsequent annual distributions from the SRBR shall be made solely to former members of this plan or the Chapter 3.32 plan who are receiving benefits as of the June 30 immediately preceding the distribution date and survivors (of such former members or of members who died prior to receiving benefits from this plan) who are receiving benefits as of said June 30.

5. The board shall develop a methodology for distributions from the SRBR such that supplemental benefits provide a greater benefit for those persons who have been in benefit status for a longer period of time and those persons receiving the lowest monthly benefit payments. Upon the approval of the methodology by the city council, the board shall make distributions in accordance with such methodology.

6. Except as required by Subsection C. or in the case of the termination of this plan, the board shall not transfer or distribute funds in the SRBR if such transfer or distribution would reduce the SRBR principal.

E. Definitions. For the purpose of this Section 3.36.580, the terms listed herein shall have the following meanings:

1. "Excess earnings" means the earnings of the retirement fund that remain after interest has been credited to the SRBR as provided in Paragraph B.2. and the actuarial assumed earnings rate adopted by the board (and in effect on June 30 of the year in which the SRBR calculation is performed) has been credited to other reserves.

2. "Former member" means a person who has retired under the provisions of this chapter or Chapter 3.32 or a person who separated from city service without retiring but left his or her contributions on deposit in the retirement fund.

3. "Investment earnings" means the earnings of the retirement fund during the twelve months ending June 30 as determined by the board's actuary using the same methodology used to determine the value of assets for the actuarial valuation. In the case of investment earnings attributable to the SRBR, the application of the methodology shall begin as of July 1, 1999.

(Ords. 26416, 26536, 28848, 28915, 29059.)

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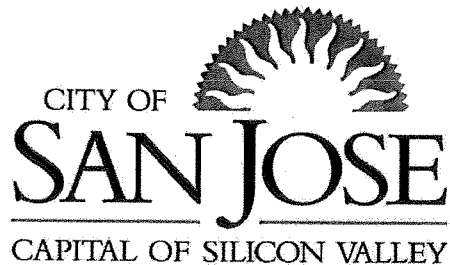
Exhibit 3

Memorandum of Agreement

City of San José

and

San José Police Officers' Association



July 1, 20110 – June 30, 20134

Service from a reciprocal agency may not be combined with the City service in order to earn four (4%) percent per year.

49.5 Effective July 1, 2006, the following employee paid plan changes will be in effect for all employees represented by the organization;

49.5.1 Elimination of the thirty (30)-day window for the redeposit of withdrawn contributions, allowing for redeposit at anytime for active employees. Total impact to the plan to be paid by affected employee.

49.5.2 Elimination of the thirty (30)-day window for the purchase of service credit for previous Federated Retirement service credit, allowing for purchase at any time for active employees. Total impact to the plan to be paid by affected employee.

49.5.3 The ability to purchase service credit for time on unpaid leave of absence. Total impact to the plan to be paid by affected employee.

49.6 In lieu of an enhancement to the current retirement formula (2.5% of final compensation per year for up to 20 years and 4% of final compensation per year for 21-30 years of service), effective June 29, 2008, employees in classifications represented by the POA shall receive a 1.75% base pay increase. The 1.75% base pay increase shall be added to the general wage increase effective on June 29, 2008, and shall not be compounded.

ARTICLE 50 RETIREE HEALTHCARE FUNDING

50.1 The City and the Employee Organization agree to transition from the current partial pre-funding of police retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the police retiree healthcare benefits plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.36.575 (C) (1) and (2) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of three-to-one. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

- 50.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.
- 50.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Police and Fire Department Retirement Plan Board's actuary, and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided in five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than 1.25% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 1.35% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 5.25% of pensionable pay.
- 50.4 If, at any time the calculated Plan member cash retiree healthcare contributions exceed 10% of pensionable pay or the calculated City cash retiree healthcare contributions exceed 11% of pensionable pay for the City (excluding implicit subsidy), the parties shall meet and confer on how to address any retiree healthcare contributions above 10% of pensionable pay for Plan members or 11% of pensionable pay for the City in order to fund the full ARC. Such discussions shall include alternatives to reduce retiree healthcare costs. If the parties are unable to agree on the manner in which to fully fund the retiree healthcare ARC (contributions exceeding 10% of pensionable pay for Plan members or 11% of pensionable pay for the City, excluding implicit subsidy), applicable impasse dispute resolution procedures shall apply.
- Nothing in this Article shall be construed to obligate Plan members to pay more than 10% of pensionable pay or the City to pay more than 11% of pensionable pay to fund retiree healthcare.
- 50.5 The City will establish a qualified trust ("Trust") before June 28, 2009. If the Trust can not be established before June 28, 2009, then the City will hold in a separate reserve any required contributions over the policy method and then deposit, with interest actually earned, into the Trust as soon as practical after the Trust is established.
- 50.6 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Police retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

Exhibit 4

Office of the City Clerk


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CITY CHARTER

In effect May, 1965

As Amended through March 2, 2004

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ARTICLE I

INCORPORATION AND SUCCESSION

SECTION 100. Name.

The City of San Jose, in the County of Santa Clara, State of California, shall continue to be a municipal corporation under its present name of "City of San Jose."

SECTION 101. Boundaries.

The boundaries of the City of San Jose shall continue as now established until changed in the manner authorized by law.

SECTION 102. Succession, Rights, Powers and Liabilities.

The City of San Jose shall remain vested with and shall continue to own, have, possess, control and enjoy all property, rights of

RETIREMENT

SECTION 1500. Duty to Provide Retirement System.

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.

SECTION 1501. Exclusions.

The Council in its discretion may exclude all or any of the following persons from any or all retirement plans, to wit: Persons mentioned in sub-paragraphs (1), (2), (4), (5), (6), and (7) of sub-section (a) of Section 1101 of this Charter; all persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of this Charter; persons employed pursuant to Section 1110 of this Charter; persons in City service primarily for training, study or educational purposes; persons employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis; temporary employees; persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons. Also, persons who are members of any other retirement or pension system, other than the federal social security system or any other federal retirement or pension system, and who are receiving credit in such other system for service rendered to the City may be excluded, as to such service, from any such plan or plans.

SECTION 1502. Authority to Join Other Systems.

Subject to other provisions of this Article, the City, by and through its Council, is hereby empowered, but not required, to join or continue as a contracting agency in any retirement or pension system or systems existing or hereafter created under the laws of the State of California or of the United States of America to which municipalities and municipal officers or employees are eligible.

SECTION 1503. Continuance of Existing Retirement Systems.

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San Jose Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San Jose or by the people of the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.

SECTION 1504. Minimum Benefits for Certain Members of Police and Fire Departments.

The Council, by ordinance, shall provide the following minimum benefits for the following members of the Police and Fire Departments of the City excepting those members who are hereinafter excluded from the application of this Section.

(a) **RETIREMENT.** An officer or employee of the Police Department or Fire Department of the City shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death a monthly retirement allowance equal to fifty percent (50%) of his or her "final compensation," hereinafter defined, if he or she:

(1) Completes twenty (20) years of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or

(2) Completes twenty (20) years of "service," hereinafter defined, is "disabled," as such term is hereinafter defined, while holding such office or employment, and applies for such retirement while holding such office or employment.

(b) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the Police Department or Fire Department of the City to any retirement fund, plan or system for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or because of benefits provided by any such program.

(c) **ACTUARIAL SOUNDNESS.** Any retirement plan or system established for officers or employees of the Police or Fire Departments shall be actuarially sound; and an actuarial report thereon shall be obtained at intervals not exceeding five (5) years.

(d) **DEFINITIONS.** As used in this Section, "service" means service as defined on the effective date of this Charter in Topic 5 of Part 3A of Chapter 9 of Article II of the San Jose Municipal Code; and "final compensation" means final compensation as defined on the effective date of this Charter in Topic 1 of Part 3A of Chapter 9 of Article II of the San Jose Municipal Code, except that with respect to officers and employees who on the effective date of this Charter are members of the Police and Fire Department Retirement Plan established by Part 3 of Chapter 9 of Article II of the San Jose Municipal Code "final compensation" shall be deemed to mean the average monthly pay received by any such officer or employee during the three (3) years immediately preceding his or her request for retirement. Also, as used in this Section, "disabled" means the incurrence of a disability, short of death, of permanent duration, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her; provided, however, that such a disability shall be deemed to be of permanent duration if the City or any of its authorized agencies finds that such disability will continue at least until the disabled person attains the age of fifty-five (55) years.

(e) **MISCELLANEOUS.** The benefits hereinabove specified are minimum only; and the Council, in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.

(f) **PERSONS EXCLUDED.** The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons hereinabove mentioned or referred to in Section 1501; officers or employees whose principal duties are those of a telephone operator, clerk, stenographer, secretary, machinist or mechanic; and any and all other officers or employees whose principal duties or functions do not fall clearly within the scope of active law enforcement or active fire fighting and prevention service even though such an officer or employee is subject to occasional call or is occasionally called upon to perform duties or functions within the scope of active law enforcement service or active fire fighting or prevention service, excepting persons employed and qualifying as police patrolmen or in equal or higher rank in the police department irrespective of the duties to which they are assigned, or persons employed and qualifying as firemen, fire fighters, hosemen or in equal or higher rank in the fire department irrespective of the duties to which they are assigned. Also, the provisions of this Section shall not apply to any person or persons who have been retired from the service of the City prior to the effective date of this Charter.

Amended at election June 7, 1994

SECTION 1505. Minimum Benefits for Officers and Employees Other Than Members of the Police or Fire Departments.

The Council, by ordinance, shall provide the following minimum benefits for all officers and employees of the City excepting those who are hereinafter excluded from the application of this Section.

(a) **SERVICE RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death an annual retirement allowance equal to two percent (2%) of his or her "final compensation," hereinafter defined, per each year of his or her first twenty-five (25) years of service, hereinafter defined, plus one percent (1%) of such final compensation per each year of his or her service in excess of twenty-five (25) years, subject to a maximum of eighty-five percent (85%) of such final compensation, if he or she:

- (1) Completes twenty-five (25) years or more of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
- (2) Attains, while holding such office or employment, the age of seventy (70) years or more regardless of his or her years of service.

(b) **DISABILITY RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, who has completed ten (10) years of "service," hereinafter defined, and is "disabled," as such term is hereinafter defined, while holding such office or employment, and applies for a disability retirement while holding such office or employment, shall be entitled, upon his or her request, to be retired from City service because of such disability, and to thereafter receive, during the period of such disability, a monthly disability retirement allowance equal in amount to the monthly disability retirement allowance provided for in Topic 16 of Part 4 of Chapter 9 of Article II of the San Jose Municipal Code as said Topic and Chapter read on the effective date of this Charter.

Exhibit 5

Yank, Jonathan

From: Olikier, Janine
Sent: Tuesday, June 05, 2012 8:28 AM
To: jholtzman@publiclawgroup.com; nora.frimann@sanjoseca.gov; hleiderman@reedsmith.com
Cc: Adam, Gregg; Yank, Jonathan; Martinez, Gonzalo; Stoughton, Jennifer
Subject: Notice of Ex Parte Appearance: San Jose POA v. City of San Jose, etc.
Attachments: Notice to Counsel of ex parte.pdf

Please find attached correspondence from Jennifer Stoughton for the San Jose POA, providing notice of the SJPOA's intention to move *ex parte* for a temporary restraining order on Wednesday morning, June 6, 2012.

Thank you.

Janine Olikier
Assistant, Public Sector Group
Carroll, Burdick & McDonough LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104
415.743.2462 (Direct)
415.989.0932 (Fax)
joliker@cbmlaw.com



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6/5/2012



June 5, 2012

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Reed Smith LLP
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San Francisco, CA 94105

**Re: *San Jose Police Officers' Association v. City of San Jose
and Board of Administration for Police and Fire Department
Retirement Plan of City of San Jose, Santa Clara County
Superior Court, No. [TBA]
File No. 038809***

Counsel:

Pursuant to California Rules of Court Nos. 3.1203 and 3.1204(a)(1), on behalf of our client, the San Jose Police Officers' Association ("SJPOA"), we write to provide notice to all parties that on Wednesday, June 6, 2012, at 8:15 a.m., SJPOA will move *ex parte* for a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue restraining Defendants from implementing Section 1509-A, Section 1511-A, Section 1512-A and Section 1513-A of Measure B. Good cause exists for SJPOA's application because the aforementioned sections of Measure B will cause numerous immediate and irreparable harms to SJPOA members by violating their contractual and constitutionally-protected rights, as the impairment of these rights cannot be fully undone once made effective.

The department is not yet assigned, and as soon as the action is filed, we will notify you of the location for the hearing. In addition, the papers supporting the *ex parte* application are not yet finalized. However, in accordance with California Rule of Court No. 3.1206, we will serve them at the first reasonable opportunity.

Jonathan V. Holtzman, Esq.

Nora Frimann

Harvey L. Leiderman, Esq.

Re: *San Jose Police Officers' Association v. City of San Jose and Board of
Administration for Police and Fire Department Retirement Plan of City of
San Jose*, Santa Clara County Superior Court, No. [TBA]

June 5, 2012

Page 2

Finally, in accordance with California Rule of Court No. 3.1204(a)(2),
please let me know as soon as possible whether you plan to attend to oppose
this *ex parte* application.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP

Jennifer S. Stoughton

JSS:jo

cc: Gregg McLean Adam, Esq.
Jonathan Yank, Esq.
Gonzalo C. Martinez, Esq.